

No. 12017

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United States  
Court of Appeals  
for the Ninth Circuit

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H. A. LASSITER and W. R. MORRISON,  
Appellants,

vs.

GUY F. ATKINSON COMPANY, a corporation,  
and UNITED STATES OF AMERICA,  
Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Western District of Washington,  
Northern Division

NOV 4 - 1948

PAUL P. O'BRIEN,



No. 12017

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United States  
Court of Appeals  
for the Ninth Circuit

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H. A. LASSITER and W. R. MORRISON,  
Appellants,

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Upon Appeal from the District Court of the United States  
for the Western District of Washington,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

FREDERICK PAUL

of Zabel, Poth & Paul,  
1912 Smith Tower,  
Seattle, Washington,  
Attorney for Appellants.

ROBERT GRAHAM

of Messrs. Bogle, Bogle & Gates,  
603 Central Building,  
Seattle, Washington,  
Attorney for Appellant Guy F. Atkinson  
Company, Appellee.

J. CHARLES DENNIS and

FRANK PELLEGRINI,

1017 U. S. Court House,  
Seattle, Washington,

Attorneys for United States of America,  
Appellee. [1\*]

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\* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

No. 1186

H. A. LASSITER and W. R. MORRISON,  
Plaintiffs,

vs.

GUY F. ATKINSON COMPANY, a corporation,  
Defendant.

### SUPPLEMENTAL ANSWER

Comes now the defendant, Guy F. Atkinson Company, a Nevada corporation, by and through its undersigned attorneys, Bogle, Bogle & Gates and Robert W. Graham, and amends its Amended Answer by adding thereto the following third defense and a fourth defense to each and every cause of action contained in the complaint herein save and accept the following causes of action:

Walter E. Skinner.....	No. 33
Thomas U. Dorsey.....	6
Wm. A. Clark.....	12
Paul H. Miller.....	21
Robert U. Tudor.....	26
F. F. McNamara.....	36

1. "Further answering said complaint and each and every cause of action and by way of a Third Affirmative Defense, defendant alleges that it is not subject to any liability or punishment for or on account of its failure to pay overtime compen-

sation as alleged for the reason that any act or omission of defendant herein alleged was in good faith, in conformity with, and in reliance on administrative regulations, orders, rulings, approvals or interpretations of any agency of the United States or administrative practices or endorsement policies of any agency of the United States with respect to the class of employers to which the defendant belongs. [2]

“Further answering said complaint and each and every cause of action and by way of a Fourth Affirmative Defense, the defendant further alleges that any act or omission complained of herein was in good faith and that the defendant had reasonable grounds for believing that its act or omission was not a violation of the Fair Labor Standards Act of 1938 as amended.”

This Supplemental Answer is filed pursuant to the “order on defendant motion to supplement its pleadings” entered herein by the Court on October 17, 1947.

BOGLE, BOGLE & GATES,  
ROBERT GRAHAM,

Attorneys for Defendant, Guy F. Atkinson Company, a corporation.

(Acknowledgment of Service.)

[Endorsed]: Filed Oct. 18, 1947. [3]

[Title of District Court and Cause.]

PLEADING OF THE UNITED STATES  
IN INTERVENTION

The United States of America, intervenor herein, for its pleading in intervention says:

1. That intervenor is not required to answer the factual allegations of the parties to this action and, therefore, neither admits nor denies such allegations.

2. That the Portal-to-Portal Act of 1947, approved May 14, 1947, conforms in all respects to the provisions and requirements of the Constitution of the United States and is an existing and valid law of the United States.

3. That the constitutionality of the said Portal-to-Portal Act of 1947 is not subject to serious question but if the Court should entertain serious doubt concerning the constitutionality of that Act, it should first consider the defenses raised by the defendant which are not based upon the Portal-to-Portal Act of 1947, and, if it finds that any such defense or defenses bar all the claims herein, it should dismiss the action without ruling on the constitutional question.

Wherefore, the United States of America prays that [4] the Court enter a judgment herein which

shall be consistent with the constitutional validity of the said Portal-to-Portal Act of 1947.

TOM C. CLARK,  
Attorney General.

By HERBERT A. BERGSON,  
Acting Assistant Attorney  
General.

J. CHARLES DENNIS,  
United States Attorney.

FRANK PELLEGRINI,  
Assistant United States  
Attorney.

Of Counsel:

ENOCH E. ELLISON,  
Special Assistant to the  
Attorney General.

JOHANNA M. D'AMICO,  
Attorney, Department of  
Justice.

(Acknowledgment of Service.)

[Endorsed]: Lodged Nov. 18, 1947.

[Endorsed]: Filed Nov. 24, 1947. [5]

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[Title of District Court and Cause.]

ORDER ON DEFENDANT'S MOTION TO  
SUPPLEMENT ITS PLEADINGS

The above entitled cause coming on before the above entitled Court, the undersigned, one of the

judges of said Court presiding, this 11th day of October, 1947, and the defendant being represented by its attorneys, Bogle, Bogle & Gates and Robert W. Graham, and the plaintiffs being represented by their attorney, Frederick Paul, on defendant's motion to supplement its answer, and the Court having heard oral argument of the parties and having read the record heretofore made herein, and being fully advised in the premises, all and singular, now, therefore, it is by the Court hereby

Ordered, Adjudged and Decreed as follows:

1. That defendant's motion to reopen for further hearing and for leave to file a supplemental answer be, and the same is hereby, denied as to the following causes of action for the respective claimants:

Walter E. Skinner.....	No. 33
Thomas U. Dorsey.....	6
Wm. A. Clark.....	12
Paul H. Miller.....	21
Robert U. Tudor.....	26
F. F. McNamara.....	36

2. That the defendant's motion to reopen this case and to supplement its answer by pleading as follows:

(a) "Further answering said complaint and each and every cause of action therein contained and by way of a Third Affirmative Defense, defendant alleges that it is not subject to any liability [6] or punishment for or on account of its failure to pay overtime compensation as alleged for the reason that any

act or omission of defendant herein alleged was in good faith, in conformity with, and in reliance on administrative regulations, orders, rulings, approvals, or interpretations or administrative practices or enforcement policies of an agency of the United States with respect to the class of employers to which the defendant belongs.

(b) "Further answering said complaint and each and every cause of action therein contained and by way of a Fourth Affirmative Defense, the defendant further alleges that any act or omission complained of herein was in good faith and that the defendant had reasonable grounds for believing that its act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended,"

be, and the same is hereby, granted as to each and every cause of action in which plaintiffs have heretofore herein recovered judgment against the defendant and in conformity with the mandate of the Circuit Court of Appeals for the Ninth Circuit, heretofore entered herein, except the six causes of action set forth in the paragraph immediately preceding this one, on the following terms and conditions:

(1) That the defendant pay forthwith to the attorneys for the plaintiffs the sum of \$600.00 as attorneys' fees, and \$560.00 as taxable costs, to be credited upon any such allowance made in favor of the plaintiffs and against the defendant upon final judgment of this case.

And it is further hereby

Ordered, Adjudged and Decreed that all evidence and each and every finding of fact, conclusion of law or judgment heretofore entered herein with respect to the issues presented by the supplemental answers of the defendant be, and the same are hereby, vacated and that the issues presented by the supplemental answer of the defendant be tried de novo.

Done in Open Court this 17th day of October, 1947.

JOHN C. BOWEN,  
Judge.

Presented by

ZABEL, POTH & PAUL,  
By FREDERICK PAUL,  
Attorneys for Plaintiffs. [7]

(Verified.)

[Endorsed]: Filed Oct. 17, 1947.

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[Title of District Court and Cause.]

STIPULATION CONCERNING RECORD  
ON APPEAL

It is hereby stipulated between the above named parties, by their respective attorneys of record, as follows:

That the Stipulation and Pre-Trial Order Re Portal Act Hearing and the reporter's transcript of evidence and exhibits, heretofore transmitted to



the Circuit Court of Appeals for the Ninth Circuit in Tyler vs. S. Birch and Sons Construction Company, a corporation, et al., Number 1293, may be the Stipulation and Pre-Trial Order Re Portal Act Hearing and the reporter's transcript of evidence and exhibits in this cause, and in lieu thereof, a copy of the within stipulation and order shall be transmitted to the said Circuit Court of Appeals.

Dated at Seattle, Washington, this 26 day of July, 1948.

OSCAR A. ZABEL &  
FREDERICK PAUL,

By /s/ FREDERICK PAUL,  
Attorneys for Plaintiff.

BOGLE, BOGLE & GATES,

By /s/ ROBERT W. GRAHAM,  
Attorneys for Defendant.

J. CHARLES DENNIS &  
FRANK PELLEGRINI,

By /s/ FRANK PELLEGRINI,  
Attorneys for the United  
States of America.

It is so ordered this 27th day of July, 1948.

/s/ LLOYD L. BLACK,  
United States District Judge.

[Endorsed]: Filed July 27, 1948. [9]

[Title of District Court and Cause.]

SUPPLEMENTAL FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The foregoing cause having been tried before the undersigned, one of the Judges of the above entitled Court, in October of 1945, upon the issues as then presented by the pleadings, and Findings of Fact, Conclusions of Law and Judgment, in favor of the plaintiffs and against the defendant, having been signed, filed and entered on the 9th day of November, 1945; and said cause having been thereafter duly appealed by both the plaintiffs and the defendant to the Circuit Court of Appeals for the Ninth Circuit; and said Court having entered its judgment herein on May 28, 1947, and thereafter pursuant to defendant's Motion for Order Modifying Judgment Remanding Case to District Court and Directing Reopening Case for Further Proceedings having entered an order on July 28, 1947, vacating its judgment of May 28, 1947, reinstating defendant's appeal as to certain counts of the complaint and remanding this cause to this Court as to all counts on which this Court had heretofore entered judgment against the defendant with power to consider any matters presented to it under the Portal-to-Portal Act of 1947; and the defendant thereafter having duly moved for and having been granted permission by order of this Court dated October 17, 1947, to reopen this cause and to file amendments to its Answer and Affirmative Defenses to certain causes of action

herein by pleading the defenses permitted under Sections 9 and 11 of the Portal-to-Portal Act of 1947 and said Supplemental Answer having therefore been filed on October 18, 1947; and a trial thereafter on the issues made having been had on December 8, 1947, and the Court having taken the cause under advisement after the filing of briefs and arguments of counsel and having heretofore orally announced its decision herein and being fully advised in the premises;

Now, Therefore, the Court does hereby make the following Supplemental:

## FINDINGS OF FACT

### I.

All practices of the defendant with respect to the payment of overtime compensation for all hours worked by the plaintiffs or plaintiff's assignors in excess of forty (40) hours in any one week were in good faith in conformity with and in reliance on administrative regulations, orders, rulings, approvals and interpretations of the following agencies of the United States, to-wit: The United States War Department, The Corps of Engineers of the United States War Department and the War Department Wage Administration Agency.

### II.

All practices of the defendant with respect to the payment of overtime compensation for all hours worked by the plaintiffs or plaintiff's assignors in excess of forty (40) hours in any one week were in good faith and that the defendant had

reasonable grounds for believing that such practices were not a violation of the Fair Labor Standards Act of 1938 as amended. [11]

Done in Open Court this 2nd day of March, 1948.

JOHN C. BOWEN,  
District Judge.

Presented by:

ROBERT W. GRAHAM,  
Attorney for Defendant.

From the foregoing Findings of Fact the Court hereby makes the following:

### CONCLUSIONS OF LAW

#### I.

The Portal-to-Portal Act of 1947 is, and Sections 9 and 11 thereof are, constitutional.

#### II.

The defendant is subject to no liability to the plaintiffs or plaintiff's assignors for or on account of defendant's failure to pay overtime compensation under the Fair Labor Standards Act of 1938, as amended.

#### III.

That paragraph LVI of the Findings of Fact, paragraphs V, VII and IX through XV both inclusive and the Judgment heretofore entered herein on the 9th day of November, 1945, in favor of plaintiffs and against defendant except insofar as they relate to the following causes of action:

Walter E. Skinner.....	No. 33
Thomas U. Dorsey.....	6
Wm. A. Clark.....	12
Paul W. Miller.....	21
Robert U. Tudor.....	26
F. F. McNamara.....	36

should be vacated, set aside and held for naught.

IV.

That the action of the plaintiffs save and except so much thereof as relates to the causes of action set forth in Conclusion of Law numbered III above should be dismissed with prejudice and with costs incurred subsequent to the filing of the Supplemental Answer in favor of the defendant, to be taxed in accordance with law and the rules of this Court.

Done in Open Court this 2nd day of March, 1948.

JOHN C. BOWEN,  
Judge.

Presented by:

ROBERT W. GRAHAM,  
Attorney for Defendant.

[Endorsed]: Filed March 2, 1948. [13]

In the United States District Court for the West-  
ern District of Washington, Northern Division

No. 1186

H. A. LASSITER and W. R. MORRISON,  
Plaintiffs,

vs.

GUY F. ATKINSON COMPANY, a Nevada  
corporation,

Defendant.

### SUPPLEMENTAL JUDGMENT

The foregoing cause having been tried before the undersigned, one of the Judges of the above entitled Court, in October of 1945, upon the issues as then presented by the pleadings, and Findings of Fact, Conclusions of Law and Judgment, in favor of the plaintiffs and against the defendant, having been signed, filed and entered on the 9th day of November, 1945; and said cause having been thereafter duly appealed by both the plaintiffs and the defendant to the Circuit Court of Appeals for the Ninth Circuit; and said Court having entered its judgment herein on May 28, 1947, and thereafter pursuant to defendant's Motion for Order Modifying Judgment Remanding Case to District Court and Directing Reopening Case for Further Proceedings having entered an order on July 28, 1947, vacating its judgment of May 28, 1947, reinstating defendant's appeal as to certain counts of the complaint and remanding this cause to this Court as to all counts on which this Court

had heretofore entered judgment against the defendant with power to consider any matters presented to it under the Portal-to-Portal Act of 1947; and the defendant thereafter having duly moved for and having been granted permission by order of this Court dated October 17, 1947, to reopen this cause and to file amendments to its Answer and Affirmative defenses to certain causes of action herein by pleading the defenses permitted under Sections 9 and 11 of the Portal-to-Portal Act of 1947 and said Supplemental Answer having therefore been filed on October 18, 1947; and a trial thereafter on the issues made having been had on December 8, 1947, and the Court having taken the cause under advisement [14] after the filing of briefs and arguments of counsel and having made and entered Supplemental Findings of Fact and Conclusions of Law and the Court being fully advised; now, therefore, it is

Ordered, Adjudged and Decreed that paragraph LVI of the Findings of Fact, paragraphs V, VII, and IX through XV both inclusive and the Judgment heretofore entered herein on the 9th day of November, 1945, in favor of plaintiffs and against defendant except insofar as they relate to the following causes of action:

Walter E. Skinner.....	No. 33
Thomas U. Dorsey.. . . . .	6
Wm. A. Clark.....	12
Paul N. Miller.....	21
Robert U. Tudor.....	26
F. F. McNamara.....	36

should be vacated, set aside and held for naught.

It Is Further Ordered, Adjudged and Decreed that the action of the plaintiffs save and except so much thereof as relates to the causes of action enumerated in the next preceding paragraph above be and the same is hereby dismissed, with prejudice and with costs incurred subsequent to the filing of the supplemental answer in favor of the defendant and against the plaintiff, to be taxed in the manner provided by law and by the rules of this Court.

Done in Open Court this 2nd day of March, 1948.

/s/ JOHN C. BOWEN,  
District Judge.

Presented by:

/s/ ROBERT GRAHAM,  
Of Bogle, Bogle & Gates,  
Attorneys for Defendant.

(Entered on Civil Docket March 2, 1948.)

[Endorsed]: Filed March 2, 1948. [15]



[Title of District Court and Cause.]

NOTICE OF APPEAL

To Guy F. Atkinson Company, a corporation, defendant, and to Robert W. Graham, Attorney for Defendant, United States of America, Intervener, and to J. Charles Dennis and Frank Pellegrini, Attorneys for Intervener.

Notice Is Hereby Given that the above named plaintiffs appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment, and the whole thereof, involved in all Causes of Action entered in the above named action on the 2nd day of March, 1948, and which is now final.

Dated at Seattle, Washington, this 27th day of April, 1948.

ZABEL, POTH & PAUL and  
FREDERICK PAUL,

By FREDERICK PAUL,  
Attorneys for Plaintiffs.

[Endorsed]: Filed April 30, 1948. [16]

[Title of District Court and Cause.]

APPEAL BOND

Know All Men by These Presents:

That I, W. R. Morrison and H. A. Lassiter, one of the plaintiffs above named, as principal of the National Surety Corporation, a corporation, organized under the laws of the State of New York, and authorized to transact business of surety in the State of Washington, as surety, are held and firmly bound unto Guy F. Atkinson Company, a Nevada corporation, the defendant named in the above entitled action, and United States of America, Intervenor, in the just and full sum of \$250.00, for which sum well and true to be paid, we bind ourselves, our and each of our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of July, 1948.

The condition of this obligation is such:

That, Whereas, the above named defendant on the 2nd day of March, 1948, in the above entitled action and Court, recovered judgment against the plaintiffs above named; and,

Whereas, the above named principal has heretofore given [17] due and proper notice that they appeal from said judgment of the above entitled Court to the Circuit Court of Appeals for the Ninth Circuit;

Now, Therefore, if the said principal, W. R. Morrison, shall pay to Guy F. Atkinson Company, a Nevada corporation, and to United States of

America, all costs and damages that may be awarded against said defendant and intervenor on the appeal, or on the dismissal thereof, not to exceed the sum of \$250.00, and shall satisfy and perform the judgment or order appealed from, in case it shall be affirmed, and any judgment or order which the United States Circuit Court of Appeals, for the Ninth Circuit, may render, or make, or order to be rendered, or made by the above entitled Court, then this obligation to be void; otherwise, to remain in full force and effect.

W. R. MORRISON, and  
H. A. LASSITER,

By FREDERICK PAUL,  
One of His Attorneys.

NATIONAL SURETY  
CORPORATION,

(Seal) By /s/ MILDRED PALITZKE,  
Attorney-in-Fact.

[Endorsed]: Filed July 15, 1948. [18]

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[Title of Court and Causes Nos. 1186, 1293, 1628.]

ORDER TO EXTEND TIME TO FILE  
RECORD AND DOCKET ACTION

These causes coming on for hearing on motion to extend the time within which to file a record on appeal and to docket the actions with the Circuit Court of Appeals for the Ninth Circuit, until

the 20th day of July, 1948, and good cause appearing therefor, it is hereby

Ordered that the time for the filing for the record on appeal and docketing of the actions in the Circuit Court of Appeals for the Ninth Circuit by the parties hereto, be, and the same is hereby, extended to and including the 20th day of July, 1948.

Done in Open Court this 28th day of May, 1948.

JOHN C. BOWEN,  
U. S. District Judge.

Presented by:

FREDERICK PAUL,  
Attorney for Plaintiffs.

Approved:

BOGLE, BOGLE & GATES,  
By J. TYLER HULL,  
Attorney for Guy F. Atkinson  
Co.

Approved:

ALLEN, HILEN, FROUDE &  
DeGARMO,  
By GERALD DeGARMO,  
Attorney for S. Birch & Sons Constr. Co. and  
Morrison-Knudsen Co.

United States Circuit Court of Appeals  
for the Ninth Circuit

No. 1186

H. A. LASSITER, et al.,

Appellants,

vs.

GUY F. ATKINSON COMPANY, a corporation,  
Appellee.

UNITED STATES OF AMERICA,  
Intervenor.

STIPULATION AND ORDER EXTENDING  
TIME TO FILE AND DOCKET CAUSE

Whereas, in the above entitled case, the appellants have filed their notice of appeal to the above entitled court, and

Whereas, the record on appeal in said cause is seven hundred pages long, and

Whereas, the order to the court reporter to transcribe the record was timely given; and

Whereas, the record has just been received and cannot be processed through the office of the Clerk of the United States District Court for the Western District of Washington, Northern Division, prior to the expiration of the time allowed by law to file and docket the same in the above entitled court. [20]

Now, Therefore, it is hereby stipulated by and between the above named parties through their

respective attorneys that the time to file and docket the said cause may be extended to, on or before August 15, 1948.

Dated at Seattle, Washington, this 12th day of July, 1948.

BOGLE, BOGLE & GATES,  
By /s/ ROBERT W. GRAHAM,  
Attorneys for Appellees.

OSCAR A. ZABEL &  
FREDERICK PAUL,  
By /s/ FREDERICK PAUL,  
Attorneys for Appellant.

It is so ordered this 19th day of July, 1948.

/s/ FRANCIS A. GARRECHT,  
United States Circuit Judge.

A true copy. Attest: July 19, 1948. Paul P. O'Brien, Clerk. (Seal)

[Endorsed]: July 19, 1948. Filed. Paul P. O'Brien, Clerk.

[Endorsed]: Filed July 21, 1948. Millard P. Thomas, Clerk. [21]

[Title of District Court and Cause.]

## STATEMENT OF POINTS ON APPEAL

The plaintiffs state that the points upon which they intend to rely upon appeal are the following:

1. The court erred in finding, concluding, and adjudging that all practices of the defendant, or any such practices, with respect to the payment of overtime compensation for all hours worked by the plaintiffs in excess for forty (40) hours in any one work week were in good faith, in conformity with and in reliance on administrative regulations, orders, rulings, approvals and interpretations of the following agencies of the United States, to-wit: The United States War Department, the Corps of Engineers of the United States War Department and the War Department Wage Administrative Agency, or an agency of the United States.

2. The court erred in finding, concluding, and adjudging that all the practices of the defendant with respect to the payment of overtime compensation for all hours worked by the plaintiffs in excess of forty (40) hours in any one work week, or any such practices, were in good faith, or that the defendant had reasonable grounds for believing that such practices were not a violation of the Fair Labor Standards Act of 1948, as amended. [22]

3. The court erred in finding, concluding, and adjudging that the defendant relied in good faith, or at all, upon anything except the contract which

they had with the War Department of the United States.

4. The court erred in holding that Sections 9 and 11 of the Portal-to-Portal Pay Act of 1947 are constitutional.

Dated at Seattle this 12th day of July, 1948.

OSCAR A ZABEL &  
FREDERICK PAUL,

By FREDERICK PAUL,  
Attorneys for Plaintiff.

(Acknowledgment of Service.)

[Endorsed]: Filed July 27, 1948. [23]

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[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Plaintiffs hereby designate the following portions of the record to be contained in the record on appeal in the above entitled action:

1. Supplemental Answer and Affirmative Defense
2. Pleading of the United States in Intervention
- 2a. Order on Defendant's Motion to Supplement Its Pleadings
3. Stipulation and Order Concerning Record on Appeal
4. Supplemental Findings of Fact and Conclusions of Law



5. Supplemental Judgment
6. Notice of Appeal
7. Cost Bond on Appeal
8. Order Granting Extension of Time to File Record and Docket Cause
9. Statement of Points on Appeal
10. This Designation

Dated at Seattle this 12th day of July, 1948.

OSCAR A. ZABEL &  
FREDERICK PAUL,

By FREDERICK PAUL,  
Attorneys for Plaintiff.

(Acknowledgment of Service.)

[Endorsed]: Filed July 27, 1948. [24]

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CERTIFICATE OF CLERK

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 24, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above entitled cause as is required by designation of counsel filed and shown herein, as the same remain of record and on file in the Office of the Clerk of said District Court at Seattle, and that the same constitute the record on appeal herein from the supplemental judgment of said United States District Court for

the Western District of Washington filed and entered on March 2, 1948, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my [25] office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's fees: 4 pages at 40c, \$1.60; 18 pages at 10c, \$1.80; Notice of Appeal, \$5.00; total, \$8.40.

I hereby certify that the above amount has been paid to me by the attorney for the appellant.

In witness whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 9th day of August, 1948.

(Seal)

MILLARD P. THOMAS,  
Clerk.

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[Endorsed]: No. 12017. United States Court of Appeals for the Ninth Circuit. H. A. Lassiter and W. R. Morrison, Appellants, vs. Guy F. Atkinson Company, a corporation, and United States of America, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed August 11, 1948.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

United States Circuit Court of Appeals  
for the Ninth Circuit

No. 12017

H. A. LASSITER, et al.,

Appellants,

vs.

GUY F. ATKINSON COMPANY, a corporation,  
Appellee.

UNITED STATES OF AMERICA,

Intervenor.

ORDER

The above-entitled matter having come on duly and regularly for hearing before the undersigned Judges of the above-entitled Court upon motion of the appellants herein for an order that the stipulation concerning evidence and pre-trial order and the designated portions of the transcript of testimony may be printed in the case of Vernon O. Tyler vs. S. Birch & Sons Construction Company and Morrison-Knudsen, Inc., No. 11983, only, and incorporated by reference in the other four cases, and the Court having considered the said motion, the file and record herein, and the stipulation of all parties in support thereof,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the stipulation concerning evidence and pre-trial order and the designated portions of the transcript of the testimony shall be printed in the case of Vernon O. Tyler vs. S. Birch & Sons Construction Company and Morrison-Knudsen, Inc., No. 11983 only and in the remaining cases a copy of the

stipulation in support of the said motion shall be printed in lieu of such portions and such portions of the record shall be incorporated therein by reference.

Dated this 29th day of July, 1948.

/s/ FRANCIS A. GARRECHT,  
Judge.

[Endorsed]: Filed July 29, 1948. Paul P. O'Brien,  
Clerk.

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[Title of U. S. Court of Appeals and Cause.]

### ORDER

This matter having come on duly and regularly for hearing before the undersigned Judges of the above-entitled Court upon motion of the above-named appellants for an order permitting all Exhibits in the above-entitled cases, consisting of three bound volumes of white background photostatic copies of various documents, to be considered in their original form by this Court and not be printed in the record, and the Court having considered the said motion, the file and record herein, and the stipulation of all parties in support of said motion.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that all exhibits in the above-entitled cases may be considered in their original form and not be printed in the record.

Dated this 29th day of July, 1948.

/s/ FRANCIS A. GARRECHT,  
Judge.

[Endorsed]: Filed July 29, 1948. Paul P. O'Brien,

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF PORTION OF RECORD  
TO BE PRINTED

The above named appellants hereby designate the entire record heretofore transmitted to the Court in this action be printed together with this designation, adoption of statement of points on appeal, and a stipulation and order of record on appeal heretofore filed in the above entitled Court.

/s/ FREDERICK PAUL,  
Attorney for Appellants.

(Acknowledgment of Service.)

[Endorsed]: Filed August 24, 1948. Paul P. O'Brien, Clerk.

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[Title of U. S. Court of Appeals and Cause.]

ADOPTION OF STATEMENT OF POINTS  
ON APPEAL

The above named appellants hereby adopt statement of points on appeal heretofore filed in the District Court in this cause.

/s/ FREDERICK PAUL,  
Attorney for Appellants.

(Acknowledgment of Service.)

[Endorsed]: Filed August 24, 1948. Paul P. O'Brien, Clerk.

